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AUG 15 2016

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Matthew Paulsen,
Bethel

File No. 2015-150

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between the Matthew S. Knickerbocker, Town of Bethel, County of Fairfield, State of Connecticut (hereinafter "Respondent") and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Complainant alleged that Respondent, while Bethel First Selectman, used public funds to promote his candidacy for re-election at the November 3, 2015 municipal election in the Town of Bethel in violation of General Statutes § 9-610 (d) (1).
2. Specifically, Complainant alleged that on October 22, 2015 he received a letter from the Bethel First Selectman's Office that was paid for with public funds and included in part a "*Status report on the Town's ongoing Road Recovery Project*," which violated General Statutes § 9-610 (d) (1) because it was promotional of Respondent's candidacy for re-election.
3. Additionally, Complainant alleged that a second mailer was sent to town residents, at public cost, on or about October 26, 2015 that was entitled "*A report to Bethel Residents – Fall 2015-2016*," which was also used to promote the First Selectman's re-election by promoting "progress" in Bethel during his incumbency in violation of General Statutes § 9-610 (d) (1).
4. By way of background, similar mailers have been published by Bethel and Respondent and have included Status Reports on the "2010 Road Recovery Project" from 2010 through October 1, 2015.
5. Further, the printed materials have delineated the specific streets incorporated in Bethel's municipal projects, the feet of roadway repaired and the type of repair made in each instance. These printed materials have been subject to similar complaints against Respondent, as detailed herein. *See Complaints of Robert Burke*, Bethel, File Nos. 2011-027, 2011-028 and 2011-029.

6. General Statutes § 9-610, provides in pertinent part:
(d) (1) *No incumbent holding office shall, during the three months preceding an election in which he is a candidate for reelection or election to another office, use public funds to mail or print flyers or other promotional materials intended to bring about his election or reelection.*
(2) No official or employee of the state or a political subdivision of the state shall authorize the use of public funds for a television, radio, movie theater, billboard, bus poster, newspaper or magazine promotional campaign or advertisement, which (A) features the name, face or voice of a candidate for public office, or (B) promotes the nomination or election of a candidate for public office, during the twelve-month period preceding the election being held for the office which the candidate described in this subdivision is seeking.
[Emphasis added.]
7. General Statutes § 9-610 (d) (1) prohibits an incumbent within the three months preceding an election from using public funds “to mail or print flyers or other promotional materials” that are intended to promote the candidacy of the incumbent.
8. The Commission finds that General Statutes § 9-610 (d) (1) would apply to the printed materials provided by the Complainant as a basis for his allegations. Further, the Commission finds that aforementioned materials were produced and disseminated at public cost and received by Bethel residents on or about October 22 and 26, 2015.
9. The mailers reviewed by the Commission and subject of this matter provide in part:
October 22, 2015 “Status Report” Mailer
By the close of the 2015 construction season, the Town will have completed without about 75% of the roads identified in the original Road Recovery Plan, plus the emergency additions mentioned above. Funding will be requested to complete the project in 2016-2017 as part of the annual budget process in the spring of 2016.
- October 26, 2015 “Report to Bethel Residents” Mailer
The pleasant weather has allowed our highway department and parks and recreation maintenance crews to get a lot of critical outdoor work done this year. In addition, town hall staff members have been very busy putting the finishing touches on other projects that we hope will help Bethel an even better place to live, work and raise a family. There are many important projects now under way. This newsletter will highlight a few of the biggest and most important.

10. The Commission has applied a two-pronged test for determining whether a communication violates General Statutes §9-610 (d) (1). A communication is deemed to violate § 9-610 (d) (1) if it: (1) expressly advocates the candidate's reelection or (2) *is so laudatory as to implicitly advocate such reelection*. See *Complaint of Karen Mulcahy*, Waterbury, File No. 2005-292A & B; *Complaint of Ann Piscottano*, New Haven, File No. 97-221; *Complaint of Joseph Travagliano*, East Haven, File No. 91-170; and *Complaint of Peter Torrano*, Norwalk, File No. 99-214.
11. The Commission finds that the *Status Report* and the *Report to Bethel Residents*, as detailed herein, do *not* expressly advocate for or against either the Respondent for reelection or the defeat of his opponent at the October 3, 2015 municipal election in Bethel. Therefore, in applying General Statutes § 9-610 (d) (1), the Commission must determine if message in the newsletter appears so laudatory as to advocate implicitly for Respondent's re-election.
12. In making this determination, the Commission finds that it has historically considered the consistency of the language of the communication in relationship to its governmental purpose. See *Mulcahy, Piscottano, Travagliano and Torrano*. Despite any governmental purpose, a communication will be deemed to violate § 9-610 (d), if it makes reference to:
 - (1) the candidacy or party affiliation of any elected official;
 - (2) the *record* of any elected official; or
 - (3) a solicitation for contributions or other support for any official's campaign for re-election, or promoting the support of any other candidate, political committee or political party.
13. Additionally, in File Nos. 2011-027, 2011-028 and 2011-029, the Commission determined the following regarding the applications of General Statutes § 9-610 (d):

The Commission, however, will take this opportunity to introduce two new factors that it will consider when making the determination of whether a communication is so laudatory that, in spite of its governmental purpose, it implicitly advocates for the reelection of an incumbent – timing of the communication and its relationship to other communications. If a communication is released shortly before an election and appears to be one of a series of communications that collectively seem to advocate for the reelection of an incumbent, then the Commission will take those factors into its determination of whether a communication violates the prohibition in § 9-610 (d) (1) on the use of public funds to promote an incumbent candidate's reelection.

[Emphasis added.]

14. In this instance, the statute applies to Respondent since he was an incumbent seeking reelection as Bethel First Selectman at the November 3, 2015 municipal election. The second prerequisite regarding timing of the publication is satisfied because each mailer that is subject to this complaint and investigation was mailed at public cost within the three month period before the November 3, 2015 Bethel municipal election.
15. The more difficult analysis lies in determining whether the publication promoted Respondent's reelection. Neither the language of the October 22, 2015 "Status Report" nor the October 26, 2015 "Report to Bethel Residents" specifically promote the candidate's reelection. They did, however, discuss Bethel's record related to its ongoing "Road Recovery Project" and general public accomplishments and progress in downtown Bethel.
16. The Commission, pursuant to its standard application of General Statutes § 9-610 (d) (1), finds that the *Status Report* and the *Report to Bethel Residents* were so laudatory of Respondent's record as an incumbent as to be promotional of his re-election as First Selectman. Further the Commission finds that the aforementioned materials were produced and disseminated at public cost within three months of the November 3, 2015 Bethel municipal election.
17. Additionally, the Commission finds, consistent with its General Statutes §9-610 (d) (1), analysis articulated in File Nos. 2011-027, 2011-028 and 2011-029 pertaining to similar allegations against Respondent, that the subject materials were: (1) released consecutively; (2) produced and disseminated shortly before an election; and, (3) collectively appeared to advocate for an incumbent's reelection.
18. The Commission therefore concludes, as detailed in paragraphs 11 through 17 above, that Respondent, on two occasions, violated § 9-610 (d) (1) by using public funds, within three months prior to the November 3, 2015 Bethel municipal election, to produce and disseminate materials that promoted his achievements as First Selectman and were intended to bring about his reelection.
19. The Commission notes that three prior complaints against Respondent alleging violations of General Statutes § 9-610 (d) (1), while he was Bethel First Selectman, were dismissed by the Commission in File Nos. 2011-127, 128 & 129.

20. The Commission finds that these past matters provide a reasonable basis to conclude that Respondent was on notice regarding the requirements of § 9-610 (d) (1) and cautions Respondent to exercise an abundance of care in authorizing future communications by the Town of Bethel within 90 days of an election.
21. The Respondent, for his part, maintains that while aware of the requirements of General Statutes § 9-610 (d) (1), prior to this complaint and investigation, he sincerely believed that at the time of publication that the materials that are subject to this complaint satisfied the parameters of General Statutes § 9-610 (d) (1) and that such decision was made in good faith.
22. Because of the past warnings to Respondent, as detailed herein, regarding the prohibitions of General Statutes § 9-610 (d) (1) in prior Commission matters the Commission deems the assessment of a civil penalty of \$500.00 *per* violation, for a total of \$1,000.00, as a necessary and meaningful deterrent for Respondent as well as a strong measure to ensure his future compliance with § 9-610 (d) (1).
23. The Respondent admits all jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and Order entered into after a full hearing and shall become final when adopted by the Commission.
24. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used against either party in any subsequent hearing, if the same becomes necessary.
25. The Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and,
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
26. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent pertaining to this matter.

ORDER

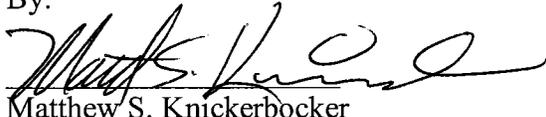
IT IS HEREBY ORDERED THAT Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-610.

IT IS HEREBY FURTHER ORDERED THAT Respondent shall pay a civil penalty in the amount of one thousand dollars (\$1,000.00) for his violations of General Statutes § 9-610 and in settlement of this matter on or before July 11, 2016.

The Respondent

For the State of Connecticut

By:



Matthew S. Knickerbocker
10 Colonial Drive
Bethel, Connecticut

By:



Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
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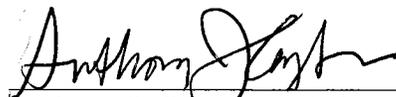
Dated:

8/15/2016

Dated:

8/17/16

Adopted this 14th day of September, 2016 at Hartford, Connecticut by vote of the Commission.



Anthony J. Castagno, Chairman
By Order of the Commission

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